

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CARLOS DONTA HAMILTON,)
)
 Movant,)
)
v.)
)
STATE OF GEORGIA,)
)
 Respondent.)

CV416-343

REPORT AND RECOMMENDATION

Carlos Donta Hamilton has filed a “Motion To Reserve (Timing for an appeal) on Motion for Inquiry on Question of Law,” properly construed by the Clerk as 28 U.S.C. § 2254 petition. Doc. 1. The Court **GRANTS** Hamilton’s motion for leave to proceed *in forma pauperis* (doc. 3), but his § 2254 petition must be **DISMISSED WITHOUT PREJUDICE**. He admits that his state habeas petition is still pending, so this is some sort of placeholder motion. Doc. 1 at 1. Generally,

[f]ederal habeas review is only available after a petitioner has exhausted all available state remedies. 28 U.S.C. § 2254(b)(1)(A). However, in limited circumstances a petitioner may file a placeholder petition before fully exhausting his state remedies and stay the federal action while he completes exhaustion. *See Rhines v. Weber*, 544 U.S. 269, 270 (2005). [But t]his “stay-and-abeyance” procedure is only available where the petitioner can demonstrate

good cause for his failure to exhaust his claims. *Id.* Even where good cause exists, the Court must conduct an initial review of the merits of the petition because the Court cannot grant a stay when the unexhausted claims are plainly meritless. *Id.*

Massey v. Young, 2012 WL 1926030 at * 1 (W.D.N.C. May 25, 2012).

Hamilton has made no good cause showing.

For that matter, he raises no substantial claim of deprivation of a constitutional right. Accordingly, no certificate of appealability should issue. 28 U.S.C. § 2253; Fed. R. App. P. 22(b); Rule 11(a) of the Rules Governing Habeas Corpus Cases Under 28 U.S.C. § 2254 (“The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.”). Any motion for leave to appeal *in forma pauperis* therefore is moot.

This Report and Recommendation (R&R) is submitted to the district judge assigned to this action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 72.3. Within 14 days of service, any party may file written objections to this R&R with the Court and serve a copy on all parties. The document should be captioned “Objections to Magistrate Judge’s Report and Recommendations.” Any request for additional time to file objections should be filed with the Clerk for consideration by the assigned district judge.

After the objections period has ended, the Clerk shall submit this R&R together with any objections to the assigned district judge. The district judge will review the magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to timely file objections will result in the waiver of rights on appeal. 11th Cir. R. 3-1; see *Symonett v. V.A. Leasing Corp.*, 648 F. App'x 787, 790 (11th Cir. 2016); *Mitchell v. U.S.*, 612 F. App'x 542, 545 (11th Cir. 2015).

SO REPORTED AND RECOMMENDED, this 24th day of February, 2017.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA